partment store, for instance, must be restricted in his choice of a place in which to trade merely because partners dissolve and one sells the good will to the other. The necessary corollary of the right to do business is the right to serve all who come of their own motion. Moreover, the rules of law must be practical, and it would be quite impossible for the proprietor even of a small business to be personally present in parts of his establishment, prepared to turn away all the old customers, and of course no clerk can be supposed to know them, even if the proprietor can be.

"The right to make known that one is in business by advertising addressed to the public generally is a necessary concomitant of the right to do business, without which that right would be hardly more than nominal. The reason for making a difference between such advertising and special solicitation is that the former is public and open to all; the latter is private and secret in a sense, and the vendor of good will has the advantage of knowing the customers, and, if permitted, could by reason of that knowledge, detract from the value of the good will he had sold.

"No relief is open to the complainant, by reason of his purchase of good will, except an injunction against soliciting customers of the old business."

Injunctions—Municipal Corporations—Right to Prohibit Undertaking Establishment on Residence Street.—In Osborn *v.* City of Shreveport, 79 So. 542 the supreme court of Louisiana held that the authority conferred upon a municipal corporation to prevent and prohibit the location, construction, or maintenance of all buildings and all establishments where any nauseous or unwholesome business may be carried on, and to restrict the same within certain limits, includes the authority to prohibit the establishment and maintenance of an undertaking business on a residential street where such business has not therefore been conducted; and that, in the absence of any prohibitive ordinance, an undertaker may be prevented, agreeably to the maxim, "Sic utere tuo ut alienum non lædas," from establishing his business among residences where such business has not theretofore been conducted.

The court said: "The courts, we think, may safely take it for granted that, with rare exceptions, civilized human beings are in a greater or less degree made uncomfortable by foul odors, and by none more so than by those emitted from a badly decomposed human body. It may be that bad cases are infrequent in plaintiff's establishment, and that the stench emitted by them is 'brought under control' as rapidly as possible; but a single experience of air so laden would, as we imagine, more than satisfy the average individual for the period of his natural life, and 15 minutes would be quite long enough for the experience. We find no reason to doubt

that plaintiff conducts his business after the most approved methods and with as little offense to those by whom he may be surrounded as the business will admit; but, to the incidents mentioned, there is to be added the fact that the business itself is a gruesome one, and that the psychological influence of being confronted, and having one's family confronted, day after day and at all hours of the day, with death, and its woeful trappings in the shape of hearses and other vehicles, carrying in and out of a neighboring building the mortal remains of some fellow being, is no more enlivening nor wholesome than would be the constant presence of the same corpse, or the immediate proximity of a grave yard; and we take judicial notice that the introduction of such a business into a residential neighborhood, where none has previously been established, will inevitably depreciate the value of the property as well as discommode the owners. The case is therefore one in which the maxim, 'Sic utere tuo,' etc., is particularly applicable, and if the city of Shreveport had no power to enforce that maxim and protect its citizens in the peace and quiet of their homes, they would be entitled to much sympathy. But we find that act 220 of 1912 (amending the charter of that city), § 1, par. 21, after conferring on the council the power to 'prohibit and prevent' various specified businesses, concludes with the following language:

" 'All establishments where any nauseous or unwholesome business may be carried on shall be restricted to certain limits within the city, to be determined by the city council.'

"And we think the business here in question is subject to the authority thus conferred.

"But, even if that were not the case, and there were no ordinance upon the subject, we can, at present, see no sufficient reason why the residents of the threatened district should not be protected from plaintiff's proposed invasion, under the general provisions of law which safeguards the citizen, in his home life, not only against nuisances per se, but against occupations which become nuisances by reason of the inappropriateness of the places in which they are conducted. The view thus suggested is ably expressed by the Supreme Court of Michigan in an opinion, the official report of which is not at hand, but which counsel for defendant has printed in full, as his brief, and which is said to have been handed down in a case entitled Saier *v.* Joy, 164 N. W. 507, L. R. A. 1918A, 825, on September 27, 1917.

"The learned court states that the industry of counsel and its own investigations had disclosed but two cases directly in point—the one, Westcott *v.* Middleton, 43 N. J. Eq. 478, 11 Atl. 490, and the other, Densmore *v.* Evergreen Camp W. O. W., 61 Wash. 230, 112 Pac. 255, 31 L. R. A. (N. S.) 608, Ann. Cas. 1912B, 1206—and that, in the case first mentioned, it appeared that defendant had been

carrying on his business in its then location, in what was said to be a "populous part of the city," that a portion of the complainant's house was occupied for business purposes, that the case turned largely upon the question whether the undertaking business was a nuisance per se, and that complainant appeared to be of a super-sensitive temperament; and the injunction was denied.

"In the case last mentioned, the injunction was granted, on the ground that the business might become a nuisance by reason of its location (in a residential neighborhood) and surrounding circumstances.

"Other cases mentioned are Ross *v.* Butler, 19 N. J. Eq. 294, 97 Am. Dec. 654, in which it was said:

"'But, on the other hand, it' (the law) does 'not allow any one, whatever his circumstances or condition may be, to be driven from his home, or to be compelled to live in it in positive discomfort, although caused by a lawful and useful business carried on in his vicinity. The maxim, "sic utere tuo ut alienum non lædas," expresses the well-established doctrine of the law.'

"And Barth *v.* Psychopathic Hospital Ass'n (Mich.) 163 N. W. 62, in which the erection and maintenance of a private insane asylum in a strictly residential district was prohibited, and it was said, inter alia:

"'It must be conceded that the establishment of such an institution in close proximity to the residences of the plaintiffs, which are in a residential section of the city, would destroy the comfort, the well-being, and the property rights of the plaintiffs.'

"In the case before it, after finding that the danger, alleged by plaintiff, of diseases being communicated from the dead bodies taken to the premises of defendant, was negligible, the learned court of Michigan went on to say:

"'We are not so well satisfied that noxious odors will not escape defendant's premises, Formaldehyde is extensively used by them in embalming, deodorizing, and sanitation. The more complete the sanitation the more formaldehyde is used. It gives off a pungent odor, and it is quite doubtful to our minds that the odor would fail to reach adjacent houses situated as close as these houses especially in the summer time, when plaintiffs would expect to have, as they have a right to have, their windows open.'

"The court was not convinced that undertaking establishments, with morgues attached, were located in other cities in strictly residential districts, and expressed its views on the psychological aspects of the case as follows:

"'We think it requires no deep research in psychology to reach the conclusion that a constant reminder of death has a depressing influence upon the normal person. Cheerful surroundings are condu-

cive to recovery for one suffering from disease, and cheerful surroundings are conducive to the maintenance of vigorous health in the normal person. Mental depression, horror, and dread, lower the vitality, rendering one more susceptible to disease, and reduce the power of resistance. There is an abundance of testimony in the record confirmatory of this, and it is a matter of common knowledge.'

"And reference is made to funerals, funeral mourners, the taking in and out of the dead, the funeral music, the unknown dead lying in the morgue, the visitors seeking to identify them, and various other reminders of mortality incidental to an undertaker's establishment and likely to produce a depressing effect.

" 'We cannot overlook the right to engage in a lawful trade' (said the court), 'nor the fact that the undertaking business is not only lawful but highly necessary, nor that it is not a nuisance per se. Nor can we overlook the right of the citizen to be protected in his home, and his right to the enjoyment there of that repose and comfort which are inherently his. The question here is, not the restraining of defendant's business, but the restraint of its introduction into a long-established and strictly residential district.' "